



# Town of Fishkill Zoning Department

## *Procedure for Filing a Variance Appeals*

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An individual has the right to file an appeal with the Fishkill Zoning Board of Appeals (ZBA) if a particular proposal fails to conform to the requirements of the Fishkill Zoning Ordinance. This process is available if a proposal does not conform with the dimensional or density requirements of the Zoning Ordinance due to unusual circumstances affecting the subject property. The appeal mechanism for seeking such relief is referred to as an "area variance." The ZBA is also empowered to authorize a use of a parcel which would otherwise not be allowed under zoning regulations. Such a request is referred to as a "use variance."

For many, appearing before the Fishkill Zoning Board of Appeals is a new and unique experience. The purpose of this handout is to provide information necessary for proceeding with the process. It is recommended that you read the following instructions and contact the Zoning Administrator's Office at (845) 831-7800 ext. 3324 should you have any questions.

In accordance with NYS General Municipal Law for Towns, section 239, the Dutchess County Department of Planning & Development requires a mandated thirty (30) day review period of all Zoning Board of Appeals applications. The Zoning Board of Appeals is prohibited to act on any variance application without first receiving referral from the Dutchess County Department of Planning & Development.

### 1. How to complete the ZBA Application

- A. Obtain a Zoning Board of Appeals Application (ZBA) form. Complete the application including all necessary signatures. Lessees and/or optionees must secure owner's written authorization as provided on the application form.
- B. All applications **must** be accompanied with a plot plan, denoting property lines, all existing and proposed buildings and structures in relation to the property lines, paved or parking surfaces and appropriate measurements. Usually, plot plans need not be completed by a professional engineer or surveyor; however, such plans must be drawn on an 8 1/2" x 11" sheet of grid paper. You must show the location of water source or well; septic systems; streets, roads, driveway and any right-of-ways. Note: In some cases professional drawings may be needed. The Zoning Administrator will so advise.
- C. Is property within 500 feet of any of the following? Yes \_\_\_\_ No \_\_\_\_ If yes, identify which ones and so state on your application. City: Village: Town: , Existing or proposed county or state park or other recreation area: , right-of-way of any existing or proposed county or state parkway , thruway , expressway , road or highway , or from the existing or proposed right-of-way of any stream , or drainage channel lines owned by the county or for which the county has established channel lines , or from the existing or proposed boundary or any county or state owned land on which a public building or institution is located .

These situations require referral to the Dutchess County Department of Planning & Development.

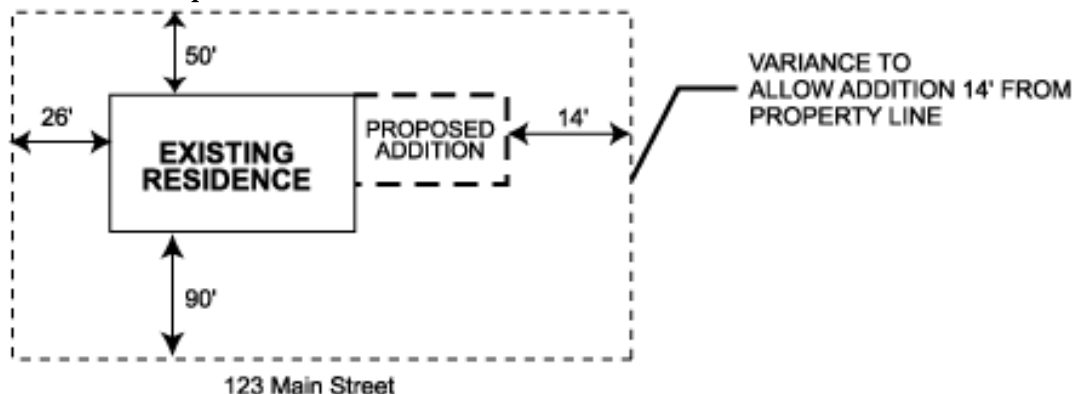


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- D. Show adjacent properties. How far to the nearest buildings in all directions? What are they? If land is a vacant lot, you must describe how the ZBA members may find it. Example of Plot Plan:



- E. Applications must include prescribed application fees payable to the Town of Fishkill to cover costs associated with legal notifications, advertising and administrative expenses to review your application. After a review of the application, the Zoning Board of Appeals may require a State Environmental Assessment Form. If this is the case you will be so informed, either prior to the hearing or at the time of the hearing.
- F. All applicants to the ZBA must reimburse the Town for any and all consultant charges that directly relate to their application. The most frequent example of this is when the ZBA determines that the Town Attorney should provide legal guidance concerning a certain variance appeal. In such a case, the applicant shall pay the Attorney's fees (See the current Town of Fishkill Fee Schedule).
- G. Submit completed application, 11 copies of your plot plan and applicable application fee to the Town of Fishkill Zoning Administrator. Upon receipt of a complete application your request will be scheduled for a public hearing. Refer to the Zoning Board of Appeals Schedule of Hearing Dates and Application Deadline Dates for submitting applications.
- H. The Zoning Administrator will notify applicants by mail approximately ten (10) days prior to the hearing confirming the time and location of the meeting. As a general rule, hearings are held at 7:30 p.m. on the **third Tuesday** of each month. You will be notified of any change in the original meeting date.
2. The Public Hearing
- A. Attendance at the Zoning Board of Appeals public hearing by either yourself or your representative is mandatory. When your case is called, approach the podium, give your name and address for the record, and proceed to explain the nature of your request. When considering an area variance, the Zoning Board of Appeals may weigh one or more of the following conditions of law relative to a variance. Therefore, it is important that you explain how each condition applies to your case.

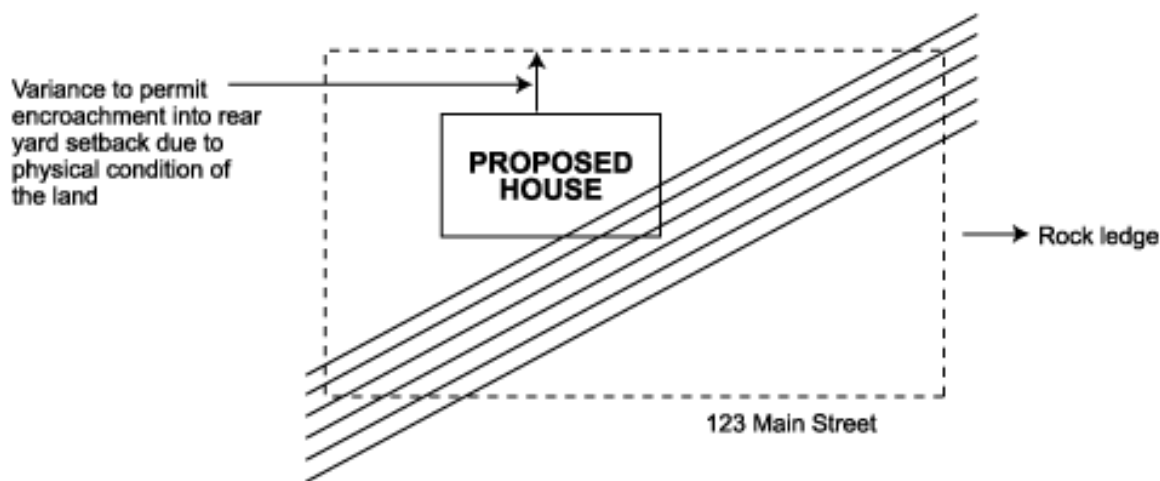


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- a. **Hardship and Practical Difficulties** - The applicant must show a hardship or practical difficulty which arises from a special condition of the land and which, if a variance is not granted, will cause the applicant significant economic injury or practical difficulty. Personal hardship cannot be considered as justifying an area variance under New York State Law. An example may include a physical condition associated with the parcel, such as severe topographic drop-off or outcrop of ledge which prevents an individual from achieving a use of the land.



- b. **Spirit and Intent** - The spirit and intent of the Zoning Ordinance must not be broken by the granting of a variance. The spirit and intent of the Fishkill Zoning Ordinance is to lessen congestion in the streets, secure safety from fires, panic, and other dangers, promote health and general welfare, provide adequate light and air, prevent overcrowding of land, avoid undue concentration of population and facilitate the adequate provision of transportation, water, sewage, schools, parks and other public requirements. The applicant must consider each of the above factors and explain how each can be met if requested.
- c. **Impact on Property Values** - The applicant must demonstrate that the requested variance will not result in a diminution of the value of the surrounding property.
- d. **Substantial Justice** - Granting the variance must result in substantial justice.
- B. Members of the public may speak either in support or in opposition to a variance appeal once the petitioner has addressed the conditions of the law. Both parties may offer rebuttal to previous testimony prior to concluding the case. The deliberation and decision of each case occurs after the case has been presented. Applicants and interested parties are to remain during this session. No new testimony may be taken at this time.



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### 3. Additional procedures - If You Are Dissatisfied With a Zoning Board of Appeals Decision

- A. Any person aggrieved by any decision of the Zoning Board of Appeals, or any other officer, department, or Board of the Town of Fishkill may apply to the Supreme Court of the State of New York for relief by a proceeding under Article 78 of the Civil Practice Law, as stated in section 267 of the Town Law. Such proceeding shall be instituted within (30) days after filing the decision in the Town Clerk's office

### ZONING BOARD OF APPEALS VARIANCE APPLICATION REQUIREMENTS

- \*\*\* The 7th of the month is the deadline for filing of the application.
- \*\*\* The following fees **must** be submitted with the application:
1. \$250.00 application fee/Residential  
\$350.00 application fee/Commercial
  2. \$100.00 or \$200.00 Escrow fee. (This fee will be determined by the Zoning Administrator)
  3. If paying by check, a separate check is required for each fee.
  4. Make all checks payable to the Town of Fishkill.
- \*\*\* The Zoning Board of Appeals Meetings are usually held on the third (3rd) Tuesday of each month. Call to verify at least one (1) week prior.